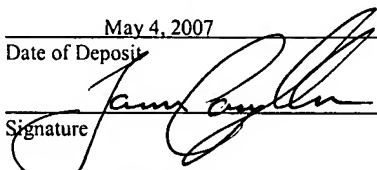
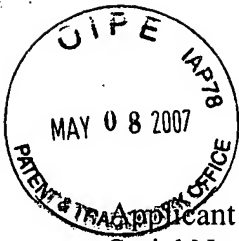


FISH & RICHARDSON P.C.

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number: 01194-458001 |
|--|---|--------------------------------|
| I hereby certify under 37 CFR § 1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450. May 4, 2007 Date of Deposit  Signature James Coughlan Typed or Printed Name of Person Signing Certificate | Application Number 10/615,276 | Filed July 8, 2003 |
| | First Named Inventor DiMatteo et al. | |
| | Art Unit 1618 | Examiner Nabila G. Ebrahim |
| | | |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>40,978</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> | | |
| <p><input type="checkbox"/> Total of no. forms are submitted.</p> | | |

21630485.doc



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : DiMatteo et al.
 Serial No. : 10/615,276
 Filed : July 8, 2003
 Title : AGENT DELIVERY PARTICLE

Art Unit : 1618
 Examiner : Nabila G. Ebrahim
 Conf. No. : 8211

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

REMARKS SUBMITTED WITH PRE-APPEAL BRIEF REQUEST FOR REVIEW

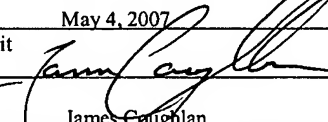
A request for a review of identified matters on appeal is hereby submitted with a Notice of Appeal. Review of identified matters by a panel of Examiners is requested because the rejections of record are clearly not proper in view of obvious legal and factual deficiencies. Applicants respectfully submit that the claim rejections are based on an improper characterization of the cited documents. In particular, Applicants respectfully submit that the Examiner has not identified a reasonable basis for obviousness, as the cited documents do not disclose or suggest the subject matter covered by the claims, and there is no suggestion to modify the teachings of the cited document to arrive at the subject matter covered by the claims.

Claims 1, 3-15, 17-24, 26-27, 29-33, 35-37 are presented for examination. Claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Br. J. Surg., Vol. 70 (1983), pages 596-598 ("Chamberlain") or PCT Application WO 02/34300 ("Gray") in view of U.S. Patent No. 6,015,542 ("Kaminski"); AJNR 1993, 14: 571-582 ("Ajay"); U.S. Patent No. 4,970,062 ("Atcher"); and/or AAPS PharmSciTech, 2001, 2(1) Technical Note 2 ("Jo").

Claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37 cover particles including a first region including pores having a first predominant pore size and a second region surrounding the first region and including pores having a second predominant pore size, the first predominant pore size is larger than the second predominant pore size. The Examiner concedes that neither

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

May 4, 2007
 Date of Deposit
 Signature 
 James Coughlan
 Typed or Printed Name of Person Signing Certificate

Chamberlain nor Gray disclose particles having the distribution of pores as required by claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37. (Office Action dated 02/06/2007, page 9). And to the extent that Jo discloses porous microspheres, Jo discloses that his polymer microspheres have either high or low pore densities. (See, e.g., Jo, page 2, col. 1, lines 17-41). Jo does not explicitly disclose the pore size distribution of his particles, and certainly does not disclose the pore size distribution required by claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37, nor does Jo inherently disclose such particles. Further, neither Kaminski, Ajay, Atcher, nor Jo, alone or in combination, cure Chamberlain's or Gray's infirmities, at least because neither Kaminski, Ajay, Atcher, nor Jo disclose or suggest particles including a first region including pores having a first predominant pore size and a second region surrounding the first region and including pores having a second predominant pore size, the first predominant pore size is larger than the second predominant pore size.

None of Chamberlain, Gray, Kaminski, Ajay, Atcher, or Jo, alone or in combination, discloses or suggests the particles covered by claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37. There is no suggestion to combine these references to provide such particles, and, even if the references were combined, the result still would not be the particles covered by claims 1, 3-15, 17-24, 26-27, 29-33, and 35-37. Therefore, Applicants request that the rejection of these claims be reconsidered and withdrawn.

Applicant submit that that claims 1, 3-15, 17-27, 29-33, 35-37 are allowable over Chamberlain, Gray, Kaminski, Ajay, Atcher, and Jo.

Applicants acknowledge with appreciation that the rejections of claims 8, 10, and/or 25 under 35 U.S.C. § 112, first or second paragraphs, were deemed overcome as noted in the Advisory Action dated April 26, 2007.

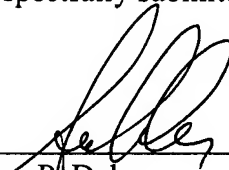
Applicant : DiMatteo et al.
Serial No. : 10/615,276
Filed : July 8, 2003
Page : 3

Attorney's Docket No. 01194-458001

Enclosed is a check in the amount of \$500.00 for the Appeal fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: May 4, 2007



Sean P. Daley
Reg. No. 40,978

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21630491.doc